

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

ANTHONY MENDES and DORIS MENDES,

Plaintiffs,

V.

CENDANT MORTGAGE,

Defendant.

Civil Action No. 05CV11765DPW

**MEMORANDUM OF LAW IN SUPPORT OF DEFENDANT’S
MOTION IN LIMINE TO STRIKE THE AFFIDAVIT OF DORIS
MENDES FILED IN SUPPORT OF PLAINTIFFS’ OPPOSITION
TO DEFENDANT’S MOTION FOR SUMMARY JUDGMENT**

Defendant PHH Mortgage Corporation, f/k/a Cendant Mortgage (“Cendant”) has filed a motion to strike the Affidavit of Doris Mendes filed in support of Plaintiffs’ Opposition to Defendant’s Motion for Summary Judgment. The Court should strike Ms. Mendes’ Affidavit for the following reasons.

Federal Rule of Civil Procedure 56(e) provides that:

Supporting and opposing affidavits shall be made on personal knowledge, shall set forth such facts as would be admissible in evidence, and shall show affirmatively that the affiant is competent to testify to the matters stated therein.

In her affidavit, Ms. Mendes makes the following assertions:

1. My mother had the ability to gift to me a significant sum of money in 2001.
2. She would have gifted to me enough money to ensure that I and my husband, Anthony, could have fund a ten percent deposit and closing costs on a property which we intended to purchase. [sic]
3. The prices as to such properties could have exceeded three hundred thousand dollars.

4. My mother recently gifted my brother \$50,000 to purchase a home.

These statements are not in compliance with Rule 56(e) because none of them are made on Ms. Mendes' personal knowledge, set forth facts that would be admissible in evidence, or show affirmatively that Ms. Mendes is competent to testify to them.

Accordingly, the Court should strike Ms. Mendes' affidavit, in its entirety.

PHH MORTGAGE CORPORATION,
f/k/a Cendant Mortgage,

By its attorneys,

/s/Andrew Keith Goldstein
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Dated: December 1, 2006

CERTIFICATE OF SERVICE

I, Andrew Keith Goldstein, hereby certify that on December 1, 2006, a true copy of the foregoing document, filed through the ECF system will be sent electronically to Plaintiffs' counsel, Christopher J. Trombetta, Law Office of Christopher J. Trombetta, 310 North Main Street, Mansfield, MA 02048.

/s/ Andrew Keith Goldstein
Andrew Keith Goldstein